

AMENDED IN SENATE MAY 27, 2005

AMENDED IN SENATE APRIL 25, 2005

SENATE BILL

No. 668

Introduced by Senator Kuehl

February 22, 2005

An act to amend Section 10295.5 of, and to repeal and add Section 20676 of, the Public Contract Code, and to amend Sections 2207, 2714, 2715, 2716, 2728, 2761, 2763, 2770, 2773.1, 2774, 2774.1, and 2775 of, to add Sections ~~2731.5~~ 2729.5, 2772.7, and 2772.8 to, and to repeal and add Sections 2731 and 2773.2 of, the Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 668, as amended, Kuehl. Mining.

(1) *Existing law requires the Department of Conservation, for purposes of complying with certain provisions regarding public contracts, to publish or otherwise make available, upon request, to the Department of General Services or a state agency, a list identifying certain surface mining operations. Existing law prohibits a state agency from acquiring or utilizing mined material unless the material is produced from a mining operation identified on that list.*

This bill would also prohibit a state agency from contracting with a person utilizing these materials, as specified. These provisions would no longer apply to certain federal lands or Indian lands.

Existing law prohibits an operator of surface mines in this state, whose operations are not identified in that list, from selling California mined material to a local agency.

This bill would instead prohibit a contractor or a mining operator from selling any minerals to a local agency unless the contractor or

mining operator certifies, under penalty of perjury, that the minerals are from a mining operation identified in the list.

Because this certification would be under penalty of perjury, the bill would impose a state-mandated local program by creating a new crime.

(2) Existing law requires the owner, lessor, lessee, agent, manager, or other person in charge of a mining operation to annually submit certain information in a report to the Director of Conservation, and to submit specified reporting fees to the State Mining and Geology Board. Existing law defines the term “mining operation” for purposes of these requirements, as a surface mine.

This bill would revise the definition of “mining operation” for purposes of these requirements to include any mining operation, including, but not limited to, a mining operation that is classified as a surface mine, and would impose those requirements upon the owner or operator of a mining operation.

~~The bill would additionally require the report to include a written acknowledgment that the owner is aware of, and approves of, any reclamation plan the operator of the mining operation on the property has proposed for, or has obtained approval of with respect to, for the property, as specified.~~

~~(2)–~~

(3) Existing law, the Surface Mining and Reclamation Act of 1975, governs surface mining operations and reclamation of mined lands. The act prohibits a person from conducting surface mining operations without obtaining a permit from the lead agency for those operations, and submitting and receiving approval for a reclamation plan and financial assurances from the lead agency. Existing law defines the term “operator” for purposes of that act. The act provides that it does not limit, among other things, the power of any city or county to regulate the use of buildings, structures, and land as between industry, business, residences, open space and other purposes.

This bill would revise the definition of the term “operator” and would additionally define the term “mineral owner” for purposes of the act. The bill would provide that the exemption of the act upon a city or county’s power does not apply to land designated as an area of regional significance or an area of statewide significance, as defined.

~~(3)–~~

(4) The act requires the State Geologist to classify certain areas identified by the Office of Planning and Research, as areas containing

little or no mineral deposits, or significant mineral deposits, or requiring further evaluation.

This bill would instead require the State Geologist to classify those areas that do not require further evaluation as an area that contains mineral deposits and that is not of regional or statewide significance, or an area that contains mineral deposits and that is either of regional or statewide significance.

~~(4)–~~

(5) Existing law requires a lead agency, before permitting a use that would threaten the potential to extract minerals in specified areas, to prepare a specified statement if the area is designated by the State Mining and Geology Board as an area of regional or statewide significance, and the lead agency either has designated that area in its general plan as having important minerals or otherwise has not yet acted, as specified.

This bill would additionally prohibit a city or county, in any area classified by the State Geologist or designated by the board as an area that contains mineral deposits and is an area of regional or statewide significance, in either its general plan, or in its resource management plan, from allowing the area to be used for, or permitting a use, that is inconsistent with the exploitation or development of that area for mineral excavation and production, until commercial production of the area so designated is completed. The bill would allow the city or county to permit part of the area to be utilized for a use not involving mineral exploitation or development, under specified circumstances.

~~(5) Existing law requires the Department of Conservation, for purposes of complying with certain provisions regarding public contracts, to publish or otherwise make available, upon request, to the Department of General Services or a state agency, a list identifying certain surface mining operations. Existing law prohibits an operator of surface mines in this state, whose operations are not identified in that list, from selling California mined material to a local agency.~~

~~This bill would also prohibit a local agency from contracting with a person utilizing these materials, as specified.~~

~~This bill would instead prohibit a contractor or a mining operator from selling any minerals to a local agency unless the contractor or mining operator certifies, under penalty of perjury, that the minerals are from a mining operation identified in the list.~~

~~Since this certification would be under penalty of perjury, the bill would impose a state-mandated local program by creating a new crime.~~

(6) The bill would make other changes with respect to mining and reclamation activities, including revising provisions relating to the review of, and appeals concerning *surface mining permits*, reclamation plans, and financial assurances for mining operations.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 10295.5 of the Public Contract Code is
2 amended to read:

3 10295.5. (a) Notwithstanding any other provision of law, no
4 state agency shall acquire or utilize sand, gravel, aggregates, or
5 other minerals produced from a surface mining operation subject
6 to the Surface Mining and Reclamation Act of 1975 (Chapter 9
7 (commencing with Section 2710) of Division 2 of the Public
8 Resources Code), or contract with a person who is not a surface
9 mining operator, but who is supplying or utilizing those mined
10 materials, to perform work for or supply materials to a state
11 agency, unless the operation is identified in the list published
12 pursuant to subdivision (b) of Section 2717 of the Public
13 Resources Code as having either of the following:

14 (1) An approved reclamation plan and financial assurances
15 covering the affected surface mining operation.

16 (2) An appeal pending before the State Mining and Geology
17 Board pursuant to subdivision (e) of Section 2770 of the Public
18 Resources Code with respect to the reclamation plan or financial
19 assurances.

20 ~~(b) (1) The owner or operator of a mining operation and the~~
21 ~~owner of a mineral interest in a mining operation shall forward a~~
22 ~~report to the Director of Conservation annually, not later than a~~

1 ~~date established by the director, upon a form furnished or~~
2 ~~approved by the State Mining and Geology Board from time to~~
3 ~~time, that includes a written acknowledgment by the owner of the~~
4 ~~fee on which the mining operation is located, and the owner of~~
5 ~~the mineral interest in the property if other than the fee owner or~~
6 ~~operator, that the owner is aware of, and approves of, any~~
7 ~~reclamation plan the operator of the mining operation on the~~
8 ~~property has proposed for, or has obtained approval of with~~
9 ~~respect to, the property, and agrees that if the operator defaults~~
10 ~~under its reclamation obligations of that reclamation plan, the~~
11 ~~owner is responsible for completing reclamation of the property~~
12 ~~in accordance with that reclamation plan.~~

13 ~~(2) The approval of a form by the State Mining and Geology~~
14 ~~Board pursuant to this subdivision is not the adoption of a~~
15 ~~regulation for purposes of Chapter 3.5 (commencing with Section~~
16 ~~11340) of Part 1 of Division 3 of Title 2 of the Government Code~~
17 ~~and is not subject to that chapter.~~

18 ~~(3) For purposes of paragraph (1), “mining operation” has the~~
19 ~~same meaning as defined in subdivision (g) of Section 2207 of~~
20 ~~the Public Resources Code.~~

21 ~~(e)–~~

22 ~~(b)~~ For purposes of this section, “minerals” means any
23 naturally occurring chemical element or compound, or groups of
24 elements and compounds, formed from inorganic processes and
25 organic substances, including, but not limited to, coal, peat, and
26 bituminous rock, but excluding geothermal resources, natural
27 gas, and petroleum.

28 SEC. 2. Section 20676 of the Public Contract Code is
29 repealed.

30 SEC. 3. Section 20676 is added to the Public Contract Code,
31 to read:

32 20676. A contractor or a mining operator shall not sell any
33 minerals, as defined in subdivision (c) of Section 10295.5, to a
34 local agency, unless the contractor or mining operator certifies,
35 under penalty of perjury, that the minerals are from a mining
36 operation identified in the list published pursuant to subdivision
37 (b) of Section 2717 of the Public Resources Code.

38 SEC. 4. Section 2207 of the Public Resources Code is
39 amended to read:

1 2207. (a) The owner or the operator of a mining operation
2 within the state shall forward to the director annually, not later
3 than a date established by the director, upon forms approved by
4 the board from time to time, a report, subject to subdivision (i),
5 that identifies all of the following:

6 (1) The name, address, and telephone number of the person,
7 company, or other owner of the mining operation.

8 (2) The name, address, and telephone number of a designated
9 agent who resides in this state, and who will receive and accept
10 service of all orders, notices, and processes of the lead agency,
11 board, director, or court.

12 (3) The location of the mining operation, its name, its mine
13 number as issued by the Bureau of Mines or the director, its
14 section, township, range, latitude, longitude, and approximate
15 boundaries of the mining operation marked on a United States
16 Geological Survey 7 ½-minute or 15-minute quadrangle map.

17 (4) The lead agency.

18 (5) The approval date of the mining operation's reclamation
19 plan.

20 (6) The mining operation's status as active, idle, reclaimed, or
21 in the process of being reclaimed.

22 (7) The commodities produced by the mine and the type of
23 mining operation.

24 (8) Proof of annual inspection by the lead agency.

25 (9) Proof of financial assurances.

26 (10) Ownership of the property, including government
27 agencies, if applicable, by the assessor's parcel number, and total
28 assessed value of the mining operation.

29 (11) The approximate permitted size of the mining operation
30 subject to Chapter 9 (commencing with Section 2710), in acres.

31 (12) The approximate total acreage of land newly disturbed by
32 the mining operation during the previous calendar year.

33 (13) The approximate total of disturbed acreage reclaimed
34 during the previous calendar year.

35 (14) The approximate total unreclaimed disturbed acreage
36 remaining as of the end of the calendar year.

37 (15) The total production for each mineral commodity
38 produced during the previous year.

1 (16) A copy of any approved reclamation plan and any
2 amendments or conditions of approval to any existing
3 reclamation plan approved by the lead agency.

4 (b) Every year, not later than the date established by the
5 director, the person submitting the report pursuant to subdivision
6 (a) shall forward to the lead agency, upon forms furnished by the
7 board, a report that provides all of the information specified in
8 paragraphs (1) to (16), inclusive, of subdivision (a).

9 (c) Subsequent reports shall include only changes in the
10 information submitted for the items described in subdivision (a),
11 except that, instead of the approved reclamation plan, the reports
12 shall include any reclamation plan amendments approved during
13 the previous year. The reports shall state whether review of a
14 reclamation plan, financial assurances, or an interim management
15 plan is pending under subdivision (b), (c), (d), or (h) of Section
16 2770, or whether an appeal before the board or lead agency
17 governing body is pending under subdivision (e) or (h) of Section
18 2770. The director shall notify the person submitting the report
19 and the owner's designated agent in writing that the report and
20 the fee required pursuant to subdivision (d) have been received,
21 specify the mining operation's mine number if one has not been
22 issued by the Bureau of Mines, and notify the person and agent
23 of any deficiencies in the report within 90 days of receipt. That
24 person or agent shall have 30 days from receipt of the
25 notification to correct the noted deficiencies and forward the
26 revised reports to the director and the lead agency. Any person
27 who fails to comply with this section, or knowingly provides
28 incorrect or false information in reports required by this section,
29 may be subject to an administrative penalty as provided in
30 subdivision (c) of Section 2774.1.

31 (d) (1) The board shall impose, by regulation, pursuant to
32 paragraph (2), an annual reporting fee on, and method for
33 collecting annual fees from, each active or idle mining operation.
34 The maximum fee for any single mining operation may not
35 exceed four thousand dollars (\$4,000) annually and may not be
36 less than one hundred dollars (\$100) annually, as adjusted for the
37 cost of living as measured by the California Consumer Price
38 Index for all urban consumers, calendar year averages, using the
39 percentage change in the previous year, beginning with the
40 2005–06 fiscal year and annually thereafter.

(2) (A) The board shall adopt, by regulation, a schedule of fees authorized under paragraph (1) to cover the department's cost in carrying out this section and Chapter 9 (commencing with Section 2710), as reflected in the Governor's Budget, and may adopt those regulations as emergency regulations. In establishing the schedule of fees to be paid by each active and idle mining operation, the fees shall be calculated on an equitable basis reflecting the size and type of operation. The board shall also consider the total assessed value of the mining operation, the acreage disturbed by mining activities, and the acreage subject to the reclamation plan.

(B) Regulations adopted pursuant to this subdivision shall be adopted by the board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of any emergency regulations pursuant to this subdivision shall be considered necessary to address an emergency and shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(3) The total revenue generated by the reporting fees may not exceed, and may be less than, the amount of three million five hundred thousand dollars (\$3,500,000), as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005–06 fiscal year and annually thereafter. If the director determines that the revenue collected during the preceding fiscal year was greater or less than the cost to operate the program, the board shall adjust the fees to compensate for the overcollection or undercollection of revenues.

(4) (A) The reporting fees established pursuant to this subdivision shall be deposited in the Mine Reclamation Account, which is hereby created. Any fees, penalties, interest, fines, or charges collected by the director or board pursuant to this chapter or Chapter 9 (commencing with Section 2710) shall be deposited in the Mine Reclamation Account. The money in the account shall be available to the department and board, upon appropriation by the Legislature, for the purpose of carrying out this section and complying with Chapter 9 (commencing with

Section 2710), which includes, but is not limited to, classification and designation of areas with mineral resources of statewide or regional significance, reclamation plan and financial assurance review, mine inspection, and enforcement.

(B) In addition to reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state and shall deposit the fees collected in the Abandoned Mine Reclamation and Minerals Fund Subaccount, which is hereby created in the Mine Reclamation Account. The department may expend the moneys in the subaccount, upon appropriation by the Legislature, for only the purposes of Sections 2796.5 and 2797.

(5) In case of late payment of the reporting fee, a penalty of not less than one hundred dollars (\$100) or 10 percent of the amount due, whichever is greater, plus interest at the rate of 1 ½ percent per month, computed from the delinquent date of the assessment until and including the date of payment, shall be assessed. New mining operations that have not submitted a report shall submit a report prior to commencement of operations. The new operation shall submit its fee according to the reasonable fee schedule adopted by the board, and the month that the report is received shall become that operation's anniversary month.

(e) The lead agency, or the board when acting as the lead agency, may impose a fee upon each mining operation to cover the reasonable costs incurred in implementing this chapter and Chapter 9 (commencing with Section 2710).

(f) For purposes of this section, "mining operation" means a mining operation of any kind or character whatever in this state, including, but not limited to, a mining operation that is classified as a "surface mining operation" as defined in Section 2735, unless excepted by Section 2714. For the purposes of fee collections only, "mining operation" may include one or more mines operated by a single operator or mining company on one or more sites, if the total annual combined mineral production for all sites is less than 100 troy ounces for precious metals, if precious metals are the primary mineral commodity produced, or less than 100,000 short tons if the primary mineral commodity produced is not precious metals.

~~(h)~~

(g) Any information in reports submitted pursuant to subdivision (a) that includes or otherwise indicates the total mineral production, reserves, or rate of depletion of any mining operation may not be disclosed to any member of the public, as defined in subdivision (b) of Section 6252 of the Government Code. Other portions of the reports are public records unless excepted by statute. Statistical bulletins based on these reports and published under Section 2205 shall be compiled to show, for the state as a whole and separately for each lead agency, the total of each mineral produced therein. In order not to disclose the production, reserves, or rate of depletion from any identifiable mining operation, no production figure shall be published or otherwise disclosed unless that figure is the aggregated production of not less than three mining operations. If the production figure for any lead agency would disclose the production, reserves, or rate of depletion of less than three mining operations or otherwise permit the reasonable inference of the production, reserves, or rate of depletion of any identifiable mining operation, that figure shall be combined with the same figure of not less than two other lead agencies without regard to the location of the lead agencies. The bulletin shall be published annually by June 30 or as soon thereafter as practicable.

~~(i)~~

(h) The approval of a form by the board pursuant to this section is not the adoption of a regulation for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and is not subject to that chapter.

SEC. 5. Section 2714 of the Public Resources Code is amended to read:

2714. This chapter does not apply to any of the following activities:

(a) Excavations or grading conducted for farming or the immediate excavation or grading of lands affected by a flood or natural disaster for the purpose of restoring those lands to their prior condition.

(b) Onsite excavation and onsite earthmoving activities that are an integral and necessary part of a construction project and that are undertaken to prepare a site for construction of structures or landscaping associated with those structures, including the

1 related excavation, grading, compaction, or the creation of fills,
2 road cuts, and embankments, whether or not surplus materials are
3 exported from the site, subject to all of the following conditions:

4 (1) All required permits for the construction, landscaping, or
5 related land improvements have been approved by a public
6 agency in accordance with applicable provisions of state law and
7 locally adopted plans and ordinances, including, but not limited
8 to, Division 13 (commencing with Section 21000).

9 (2) The lead agency's approval of the construction project
10 included consideration of the onsite excavation and onsite
11 earthmoving activities pursuant to Division 13 (commencing
12 with Section 21000).

13 (3) The approved construction project is consistent with the
14 general plan or zoning of the site.

15 (4) Surplus materials shall not be exported from the site unless
16 and until actual construction work has commenced and shall
17 cease if it is determined that construction activities have
18 terminated, have been indefinitely suspended, or are no longer
19 being actively pursued.

20 (c) Operation of a plant site used for mineral processing,
21 including associated onsite structures, equipment, machines,
22 tools, or other materials, including the onsite stockpiling and
23 onsite recovery of mined materials, subject to all of the following
24 conditions:

25 (1) The plant site is located on lands designated for industrial
26 or commercial uses in the applicable county or city general plan.

27 (2) The plant site is located on lands zoned industrial or
28 commercial, or are contained within a zoning category intended
29 exclusively for industrial activities by the applicable city or
30 county.

31 (3) None of the minerals being processed are being extracted
32 onsite.

33 (4) All reclamation work has been completed pursuant to the
34 approved reclamation plan for any mineral extraction activities
35 that occurred onsite after January 1, 1976.

36 (d) Prospecting for, or the extraction of, minerals for
37 commercial purposes where the removal of overburden or
38 mineral product totals less than 1000 cubic yards in any one
39 location, and the total surface area disturbed is less than one acre
40 in extent.

1 (e) Surface mining operations that are required by federal law
2 in order to protect a mining claim, if those operations are
3 conducted solely for that purpose.

4 (f) Any other surface mining operations that the board, as
5 defined by Section 2001, determines to be of an infrequent nature
6 and which involve only minor surface disturbances.

7 (g) The solar evaporation of sea water or bay water for the
8 production of salt and related minerals.

9 (h) Emergency excavations or grading conducted by the
10 Department of Water Resources or the Reclamation Board for the
11 purpose of averting, alleviating, repairing, or restoring damage to
12 property due to imminent or recent floods, disasters, or other
13 emergencies.

14 (i) (1) Surface mining operations conducted on lands owned
15 or leased, or upon which easements or rights-of-way have been
16 obtained, by the Department of Water Resources for the purpose
17 of the State Water Resources Development System or flood
18 control, and surface mining operations on lands owned or leased,
19 or upon which easements or rights-of-way have been obtained,
20 by the Reclamation Board for the purpose of flood control, if the
21 Department of Water Resources adopts, after submission to and
22 consultation with, the Department of Conservation, a reclamation
23 plan for lands affected by these activities, and those lands are
24 reclaimed in conformance with the standards specified in
25 regulations of the board adopted pursuant to this chapter. The
26 Department of Water Resources shall provide an annual report to
27 the Department of Conservation by the date specified by the
28 Department of Conservation on these mining activities.

29 (2) Nothing in this subdivision shall require the Department of
30 Water Resources or the Reclamation Board to obtain a permit or
31 secure approval of a reclamation plan from any city or county in
32 order to conduct surface mining operations specified in
33 paragraph (1). Nothing in this subdivision shall preclude the
34 bringing of an enforcement action pursuant to Section 2774.1, if
35 it is determined that a surface mine operator, acting under
36 contract with the Department of Water Resources or the
37 Reclamation Board on lands other than those owned or leased, or
38 upon which easements or rights-of-way have been obtained, by
39 the Department of Water Resources or the Reclamation Board, is
40 otherwise not in compliance with this chapter.

(j) (1) Excavations or grading for the exclusive purpose of obtaining materials for roadbed construction and maintenance conducted in connection with timber operations or forest management on land owned by the same person or entity. This exemption is limited to excavation and grading that is conducted adjacent to timber operation or forest management roads and shall not apply to onsite excavation or grading that occurs within 100 feet of a Class One watercourse or 75 feet of a Class Two watercourse, or to excavation for materials that are, or have been, sold for commercial purposes.

(2) This exemption shall be available only if slope stability and erosion are controlled in accordance with subdivision (f) of Section 3704 and subdivision (d) of Section 3706 of Title 14 of the California Code of Regulations and, upon closure of the site, the person closing the site implements, where necessary, revegetation measures and postclosure uses in consultation with the Department of Forestry and Fire Protection.

(k) Excavations, grading, or other earthmoving activities in an oil or gas field that are integral to, and necessary for, ongoing operations for the extraction of oil or gas that comply with all of the following conditions:

(1) The operations are being conducted in accordance with Division 3 (commencing with Section 3000).

(2) The operations are consistent with any general plan or zoning applicable to the site.

(3) The earthmoving activities are within oil or gas field properties under a common owner or operator.

(4) No excavated materials are sold for commercial purposes.

SEC. 6. Section 2715 of the Public Resources Code is amended to read:

2715. No provision of this chapter or any ruling, requirement, or policy of the board is a limitation on any of the following:

(a) On the police power of any city or county or on the power of any city or county to declare, prohibit, and abate nuisances.

(b) On the power of the Attorney General, at the request of the board, or upon his or her own motion, to bring an action in the name of the people of the State of California to enjoin any pollution or nuisance.

1 (c) On the power of any state agency in the enforcement or
2 administration of any provision of law which it is specifically
3 authorized or required to enforce or administer.

4 (d) On the right of any person to maintain at any time any
5 appropriate action for relief against any private nuisance as
6 defined in Part 3 (commencing with Section 3479) of Division 4
7 of the Civil Code or for any other private relief.

8 (e) On the power of any lead agency to adopt policies,
9 standards, or regulations imposing additional requirements on
10 any person if the requirements do not prevent the person from
11 complying with the provisions of this chapter.

12 (f) (1) Except as provided in paragraph (2), on the power of
13 any city or county to regulate the use of buildings, structures, and
14 land as between industry, business, residences, open space
15 (including agriculture, recreation, the enjoyment of scenic
16 beauty, and the use of natural resources), and other purposes.

17 (2) Paragraph (1) does not apply to land designated as an area
18 of regional significance or an area of statewide significance, as
19 defined in Section 2726 or 2727, respectively.

20 SEC. 7. Section 2716 of the Public Resources Code is
21 amended to read:

22 2716. (a) Any interested person may commence an action on
23 his or her own behalf against the board, the State Geologist, or
24 the director for a writ of mandate pursuant to Chapter 2
25 (commencing with Section 1084) of Title 1 of Part 3 of the Code
26 of Civil Procedure to compel the board, the State Geologist, or
27 the director to carry out any duty imposed upon them pursuant to
28 this chapter.

29 (b) For purposes of this section, “person” means an individual,
30 firm, association, corporation, organization, or partnership, or a
31 city, county, district, or the state or any department or agency of
32 the state.

33 SEC. 8. Section 2728 of the Public Resources Code is
34 amended to read:

35 2728. “Lead agency” means the city, county, San Francisco
36 Bay Conservation and Development Commission, or the board
37 which has the principal responsibility for approving a
38 reclamation plan pursuant to this chapter.

39 SEC. 9. Section 2729.5 is added to the Public Resources
40 Code, to read:

1 2729.5. (a) “Mineral owner” means the owner of some or all
2 of the mineral estate in the property on which the mining
3 operation is located.

4 (b) “Mineral owner” includes the owner of some or all of the
5 surface estate in the property, but only to the extent that the
6 surface owner also owns some or all of the mineral estate in the
7 property, and does not include the federal government or an
8 agency of the federal government.

9 (c) ~~It that~~ If the mineral estate is divided between more than
10 one owner on the basis of ownership in specified minerals, then
11 “mineral owner” refers only to the owner or owners who have an
12 ownership interest in the specified mineral that was the subject of
13 the breach of *the* reclamation plan described in subdivision (c) of
14 Section 2731.

15 SEC. 10. Section 2731 of the Public Resources Code is
16 repealed.

17 SEC. 11. Section 2731 is added to the Public Resources
18 Code, to read:

19 2731. (a) “Operator” means a person or entity performing the
20 primary mining activity on the mined lands.

21 (b) “Operator” includes both of the following:

22 (1) A person or entity excavating or processing ore or minerals
23 on or taken from the mined lands, whether done directly or under
24 a contract with a third party.

25 (2) The direct or indirect parent company of the operator.

26 (c) If an operator defaults in its obligations to reclaim the
27 mined lands, as set forth in any applicable reclamation plan, the
28 mineral owner shall succeed to all the obligations of the operator
29 to complete the reclamation of the mined lands, and under those
30 conditions, the mineral owner shall be considered an “operator”
31 for purposes of this chapter. A mineral owner shall not succeed
32 to any obligation of an operator if the operator is mining the land
33 pursuant to a lease or other agreement with the mineral owner
34 executed prior to January 1, 2006. However, an extension or
35 renewal of any such lease or agreement *executed after March 31,*
36 *2005*, shall obligate the mineral owner to reclaim the mined lands
37 upon the default of the operator, to the extent that the operator
38 conducted mining operations on those lands after March 31,
39 2005.

1 SEC. 12. Section 2761 of the Public Resources Code is
2 amended to read:

3 2761. (a) On or before January 1, 1977, and, as a minimum,
4 after the completion of each decennial census, the Office of
5 Planning and Research shall identify portions of the following
6 areas within the state that are urbanized or are subject to urban
7 expansion or other irreversible land uses that would preclude
8 mineral extraction:

9 (1) Standard metropolitan statistical areas and other areas for
10 which information is readily available.

11 (2) Other areas as may be requested by the board.

12 (b) In accordance with a time schedule, and based upon
13 guidelines adopted by the board, the State Geologist shall
14 classify, on the basis solely of geologic factors, and without
15 regard to existing land use and land ownership, the areas
16 identified by the Office of Planning and Research, any area for
17 which classification has been requested by a petition which has
18 been accepted by the board, or any other areas as may be
19 specified by the board, as one of the following:

20 (1) An area that contains mineral deposits and is not of
21 regional or statewide significance.

22 (2) An area that contains mineral deposits and is either of
23 regional or statewide significance.

24 (3) Areas containing mineral deposits, the significance of
25 which requires further evaluation.

26 (c) The State Geologist shall require the petitioner to pay the
27 reasonable costs of classifying an area for which classification
28 has been requested by the petitioner.

29 (d) The State Geologist shall transmit the information to the
30 board for incorporation into the state policy and for transmittal to
31 lead agencies.

32 SEC. 13. Section 2763 of the Public Resources Code is
33 amended to read:

34 2763. (a) If an area is designated by the board as an area of
35 regional significance, and the lead agency either has designated
36 that area in its general plan as having important minerals to be
37 protected pursuant to subdivision (a) of Section 2762, or
38 otherwise has not yet acted pursuant to subdivision (a) of Section
39 2762, then prior to permitting a use that would threaten the
40 potential to extract minerals in that area, the lead agency shall

1 prepare a statement specifying its reasons for permitting the
2 proposed use, in accordance with subdivision (d) of Section
3 2762. Lead agency land use decisions involving areas designated
4 as being of regional significance shall be in accordance with the
5 lead agency's mineral resource management policies and shall
6 also, in balancing mineral values against alternative land uses,
7 consider the importance of these minerals to their market region
8 as a whole and not just their importance to the lead agency's area
9 of jurisdiction.

10 (b) If an area is designated by the board as an area of statewide
11 significance, and the lead agency either has designated that area
12 in its general plan as having important minerals to be protected
13 pursuant to subdivision (a) of Section 2762, or otherwise has not
14 yet acted pursuant to subdivision (a) of Section 2762, then prior
15 to permitting a use which would threaten the potential to extract
16 minerals in that area, the lead agency shall prepare a statement
17 specifying its reasons for permitting the proposed use, in
18 accordance with subdivision (d) of Section 2762. Lead agency
19 land use decisions involving areas designated as being of
20 statewide significance shall be in accordance with the lead
21 agency's mineral resource management policies and shall also, in
22 balancing mineral values against alternative land uses, consider
23 the importance of the mineral resources to the state and nation as
24 a whole.

25 (c) If an area is classified by the State Geologist or designated
26 by the board as an area that contains mineral deposits and is an
27 area of regional or statewide significance, a city or county shall
28 not, in either its general plan, or in its resource management plan,
29 allow the area to be used for, or permit a use, that is inconsistent
30 with the exploitation or development of that area for mineral
31 excavation and production, until commercial production of that
32 area is completed, except for uses that would not limit or prohibit
33 mineral exploitation or development in that area in the future. If
34 exploitation or development is completed on a part of that area,
35 and that part has been reclaimed pursuant to its approved
36 reclamation plan, the city or county may allow that part to be
37 utilized for a use not involving mineral exploitation or
38 development, if mineral exploitation or development is allowed
39 on the remainder of the designated area.

1 SEC. 14. Section 2770 of the Public Resources Code is
2 amended to read:

3 2770. (a) Except as provided in this section, no person shall
4 conduct surface mining operations unless a permit is obtained
5 from, a reclamation plan has been submitted to and approved by,
6 and financial assurances for reclamation have been approved by,
7 the lead agency for the operation pursuant to this article.

8 (b) Any person with an existing surface mining operation who
9 has vested rights pursuant to Section 2776 and who does not have
10 an approved reclamation plan shall submit a reclamation plan to
11 the lead agency not later than March 31, 1988. If a reclamation
12 plan application is not on file by March 31, 1988, the
13 continuation of the surface mining operation is prohibited until a
14 reclamation plan is submitted to the lead agency.

15 (c) If a person with an existing surface mining operation has
16 received lead agency approval of its financial assurances for
17 reclamation prior to January 1, 1991, the lead agency shall
18 administratively review those existing financial assurances in
19 accordance with subdivision (d) prior to January 1, 1992. The
20 review of existing financial assurances shall not be considered a
21 project for purposes of Division 13 (commencing with Section
22 21000). Any person with an existing surface mining operation
23 which does not have financial assurances that received lead
24 agency approval prior to January 1, 1991, shall submit financial
25 assurances for reclamation for review in accordance with
26 subdivision (d).

27 (d) The lead agency's review of a reclamation plan or financial
28 assurance shall be limited to whether the reclamation plan or
29 financial assurance meets the requirements of this chapter ~~and~~,
30 the state regulations adopted by the board pursuant to this
31 chapter, *and the lead agency's surface mining ordinance*.

32 (e) ~~Any affected mine~~ *An affected mining* operator may file an
33 appeal with the board, other than in cases where the board is a
34 lead agency, if he or she alleges that the lead agency has failed to
35 act, or has acted in violation of this chapter and the state's
36 policies adopted by the board in approving or failing to approve
37 a reclamation plan or financial assurance. Any appeal shall be
38 made within 30 days of an approval or disapproval of a
39 reclamation plan or financial assurance by the lead agency, or if
40 the allegation is that the local lead agency has failed to act on a

request for approval of a reclamation plan or financial assurance, within 180 days from the date a complete application for the approval was filed with the local lead agency.

(f) The board may decline to hear an appeal if it determines that the appeal raises no substantial issues related to the lead agency's review pursuant to this section.

~~(g) Appeals that the board accepts for hearing shall be scheduled for a public hearing within 180 days of the filing of the appeal. In hearing an appeal, the board shall require the appellant to provide a record of the proceedings, if any, before the local lead agency, relating to the issues for which an appeal is sought. Any documents prepared by the local lead agency pursuant to Division 13 (commencing with Section 21000) shall be part of the record on appeal. Upon completion of any hearing, the board may affirm the local lead agency's decision, remand the matter for the further consideration by the lead agency consistent with any conditions imposed by the board on the remand, or reverse the local lead agency's decision. The board's decision shall be final and not subject to appeal.~~

(g) (i) Appeals that the board accepts for hearing shall be scheduled for a public hearing within 180 days of the filing of the appeal. If the board is required to prepare, or causes to be prepared, a certified environmental impact report in connection with the appeal, the public hearing shall be held within one year of the date of the filing of the appeal. In the event of the filing of an appeal, the lead agency shall prepare, certify, and provide to the board and the appellant, a record of the proceedings, if any, before the local lead agency, relating to the issues for which the appeal is sought. All documents prepared by the local lead agency pursuant to Division 13 (commencing with Section 21000) shall be part of the record on appeal. The reasonable costs of preparing the record on appeal shall be borne by the appellant. Upon completion of a hearing, the board shall affirm the lead agency's decision if the decision is supported by substantial evidence in light of the whole record. If the board determines that the lead agency's decision is not supported by substantial evidence in light of the whole record, the board shall approve, with or without modifications, the reclamation plan or financial assurances subject to those conditions it deems

1 *appropriate, taking into account any conditions proposed by the*
2 *lead agency.*

3 *(ii) The board shall provide notice of a public hearing*
4 *required by paragraph (i) consistent with the notice provisions*
5 *set forth in Section 65091 of the Government Code, including*
6 *providing notice to the lead agency.*

7 (h) (1) Within 90 days of a surface mining operation
8 becoming idle, as defined in Section 2727.1, the operator shall
9 submit to the lead agency for review and approval, an interim
10 management plan. The review and approval of an interim
11 management plan shall not be considered a project for purposes
12 of Division 13 (commencing with Section 21000). The approved
13 interim management plan shall be considered an amendment to
14 the surface mining operation's approved reclamation plan, for
15 purposes of this chapter. The interim management plan shall
16 provide measures the operator will implement to maintain the site
17 in compliance with this chapter, including, but not limited to, all
18 permit conditions.

19 (2) The interim management plan may remain in effect for a
20 period not to exceed five years, at which time the lead agency
21 shall do one of the following:

22 (A) Renew the interim management plan for another period
23 not to exceed five years, if the lead agency finds that the surface
24 mining operator has complied fully with the interim management
25 plan.

26 (B) Require the surface mining operator to commence
27 reclamation in accordance with its approved reclamation plan.

28 (3) The financial assurances required by Section 2773.1 shall
29 remain in effect during the period that the surface mining
30 operation is idle. If the surface mining operation is still idle after
31 the expiration of its interim management plan, the surface mining
32 operation shall commence reclamation in accordance with its
33 approved reclamation plan.

34 (4) Within 60 days of the receipt of the interim management
35 plan, or a longer period mutually agreed upon by the lead agency
36 and the operator, the lead agency shall review and approve the
37 plan in accordance with its ordinance adopted pursuant to
38 subdivision (a) of Section 2774, so long as the plan satisfies the
39 requirements of this subdivision, and so notify the operator in
40 writing. Otherwise, the lead agency shall notify the operator in

1 writing of any deficiencies in the plan. The operator shall have
2 30 days, or a longer period mutually agreed upon by the operator
3 and the lead agency, to submit a revised plan.

4 (5) The lead agency shall approve or deny approval of the
5 revised interim management plan within 60 days of receipt. If the
6 lead agency denies approval of the revised interim management
7 plan, the operator may appeal that action to the lead agency's
8 governing body, which shall schedule a public hearing within 45
9 days of the filing of the appeal, or any longer period mutually
10 agreed upon by the operator and the governing body.

11 (6) Unless review of an interim management plan is pending
12 before the lead agency, or an appeal is pending before the lead
13 agency's governing body, a surface mining operation which
14 remains idle for over one year after becoming idle as defined in
15 Section 2727.1 without obtaining approval of an interim
16 management plan shall be considered abandoned and the
17 operator shall commence and complete reclamation in
18 accordance with the approved reclamation plan.

19 (i) Any enforcement action which may be brought against a
20 surface mining operation for operating without an approved
21 reclamation plan, financial assurance, or interim management
22 plan, shall be held in abeyance pending review pursuant to
23 subdivision (b), (c), (d), or (h) or the resolution of an appeal filed
24 with the board pursuant to subdivision (e), or with a lead agency
25 governing body pursuant to subdivision (h).

26 SEC. 15. Section 2772.7 is added to the Public Resources
27 Code, to read:

28 2772.7. A lead agency, upon approval of a reclamation plan
29 or an amendment to a reclamation plan, shall record a "Notice of
30 Reclamation Plan Approval" with the county recorder. The
31 notice shall read: "Mining operations conducted on the
32 hereinafter described real property are subject to a reclamation
33 plan approved by the _____, a copy of which is on
34 file with the _____."

35 SEC. 16. Section 2772.8 is added to the Public Resources
36 Code, to read:

37 ~~2772.8. A written acknowledgment by the owner of the fee~~
38 ~~on which the mining operation is located, and the owner of the~~
39 ~~mineral interest in the property if other than the fee owner or~~
40 ~~operator, that the owner is aware of, and approves of, any~~

~~reclamation plan the operator of the mining operation on the property has proposed for, or has obtained approval of with respect of, for the property, and agrees that if the operator defaults under its reclamation obligations of that reclamation plan, the owner is subject to both of the following:~~

~~(a) The owner is responsible for completing reclamation of the property in accordance with that reclamation plan.~~

~~(b) The owner shall allow access to the property to any governmental agency or the agent of any company providing financial assurances in connection with the reclamation plan, in order that reclamation can be carried out by the entity or company, in accordance with the reclamation plan.~~

2772.8. When a reclamation plan is adopted or amended, the mineral owner, if other than the operator on the mining operation of the property, shall forward to the lead agency, with a copy to the director, a written acknowledgment by the mineral owner that he or she is aware and approves of the reclamation plan the operator has proposed for, or has obtained approval of with respect to, the property; and, agrees that if the operator defaults under the reclamation obligations of that reclamation plan, the mineral owner is responsible for completing reclamation of the property in accordance with the reclamation plan.

SEC. 17. Section 2773.1 of the Public Resources Code is amended to read:

2773.1. (a) Lead agencies shall require financial assurances of each surface mining operation to ensure that reclamation is performed in accordance with the surface mining operation's approved reclamation plan, as follows:

(1) Financial assurances may take the form of surety bonds executed by an admitted surety insurer, as defined in subdivision (a) of Section 995.120 of the Code of Civil Procedure, irrevocable letters of credit, trust funds, or other forms of financial assurances specified by the board pursuant to subdivision (e) that the lead agency reasonably determines are adequate to perform reclamation in accordance with the surface mining operation's approved reclamation plan.

(2) The financial assurances shall remain in effect for the duration of the surface mining operation and any additional period until reclamation is completed.

1 (3) The amount of financial assurances required of a surface
2 mining operation for any one year shall be adjusted annually to
3 account for new lands disturbed by surface mining operations,
4 inflation, and reclamation of lands accomplished in accordance
5 with the approved reclamation plan.

6 (4) The financial assurances shall be made payable to the lead
7 agency and the department. Financial assurances that were
8 approved by the lead agency prior to January 1, 1993, and were
9 made payable to the State Geologist shall be considered payable
10 to the department for purposes of this chapter. However, if a
11 surface mining operation has received approval of its financial
12 assurances from a public agency other than the lead agency, the
13 lead agency shall deem those financial assurances adequate for
14 purposes of this section, or shall credit them toward fulfillment of
15 the financial assurances required by this section, if they are made
16 payable to the public agency, the lead agency, and the
17 department and otherwise meet the requirements of this section.
18 In any event, if a lead agency and one or more public agencies
19 exercise jurisdiction over a surface mining operation, the total
20 amount of financial assurances required by the lead agency and
21 the public agencies for any one year shall not exceed that amount
22 which is necessary to perform reclamation of lands remaining
23 disturbed. For purposes of this paragraph, a “public agency” may
24 include a federal agency.

25 (b) (1) If the lead agency or the board determines that the
26 operator is financially incapable of performing reclamation in
27 accordance with its approved reclamation plan, or has abandoned
28 its surface mining operation without completing reclamation,
29 either the lead agency or the director may take appropriate action
30 to require the forfeiture of the financial assurances relating to the
31 reclamation of the ~~mine~~ mining operation.

32 (2) The forfeiture provided for in paragraph (1) shall not occur
33 until the mining operator has first been given 10 days written
34 notice, by personal service or certified mail, of the intended
35 forfeiture, and an opportunity to discuss his or her financial
36 situation and the proposed forfeiture with the lead agency or
37 director, as appropriate. However, the 10-day-notice period shall
38 not be required as a condition to forfeiting these financial
39 assurances, if any financial assurances would otherwise expire or

1 cease to be effective *during the 10-day period or* within five days
2 after the 10-day period.

3 (3) Use the proceeds from the forfeited financial assurances to
4 conduct and complete reclamation in accordance with the
5 approved reclamation plan. In no event shall the financial
6 assurances be used for any other purpose. The operator is
7 responsible for the costs of conducting and completing
8 reclamation in accordance with the approved reclamation plan
9 which are in excess of the proceeds from the forfeited financial
10 assurances.

11 (c) Financial assurances shall no longer be required of a
12 surface mining operation, and shall be released, upon written
13 notification by the lead agency, which shall be forwarded to the
14 operator and the director, that reclamation has been completed in
15 accordance with the approved reclamation plan. If a mining
16 operation is sold or ownership is transferred to another person,
17 the existing financial assurances shall remain in force and shall
18 not be released until the new owner of the mining operation
19 assumes in writing the obligations to complete reclamation in
20 accordance with the terms of any existing reclamation plan
21 approved for the operation, and posts sufficient new financial
22 assurances, pursuant to this chapter, as may be required by the
23 lead agency. No transferee of any mining operation shall be
24 recognized as a ~~mine~~ *mining* operator for the mining operation in
25 question, until the occurrence of both these conditions.

26 (d) (1) The lead agency shall have primary responsibility to
27 seek forfeiture of financial assurances and to reclaim mined lands
28 pursuant to this chapter. However, except in cases where the
29 board is the lead agency, in which case no notice need be given,
30 the director may not act to seek forfeiture of financial assurances
31 and reclaim mine sites pursuant to this chapter until the director
32 has first given notice to the lead agency that the director has
33 determined to seek forfeiture of the financial assurances, and
34 unless the lead agency has done so within 10 days from the date
35 of that notice. The director shall specify in that notice that he or
36 she has determined that the ~~mine~~ *mining* operator is financially
37 incapable of completing reclamation or has abandoned the
38 mining operation.

39 (2) The director shall not be required to give the lead agency
40 that notice if the director determines that there is a violation of

1 this chapter by the mining operator that amounts to an imminent
2 and substantial danger to the public health, safety, or the
3 environment, or, if the lead agency has notified the director that
4 it is unable to successfully seek the forfeiture of these financial
5 assurances.

6 (e) The board may adopt regulations specifying financial
7 assurance mechanisms other than surety bonds, irrevocable
8 letters of credit, and trust funds, which the board determines are
9 reasonably available and adequate to ensure reclamation pursuant
10 to this chapter, but these mechanisms may not include financial
11 tests, or surety bonds executed by one or more personal sureties.
12 These mechanisms may include reclamation bond pool programs.

13 (f) On or before March 1, 1993, the board shall adopt
14 guidelines to implement this section. The guidelines are exempt
15 from the requirements of Chapter 3.5 (commencing with Section
16 11340) of Part 1 of Division 3 of Title 2 of the Government
17 Code, and are not subject to review by the Office of
18 Administrative Law.

19 SEC. 18. Section 2773.2 of the Public Resources Code is
20 repealed.

21 SEC. 19. Section 2773.2 is added to the Public Resources
22 Code, to read:

23 2773.2. The mineral owner and owner of the surface estate, if
24 legally entitled to do so, shall allow access to the property on
25 which the mining operation is located to any governmental
26 agency or the agent of any company providing financial
27 assurances in connection with the reclamation plan and
28 expending those financial assurances for reclamation, in order
29 that reclamation may be carried out by the entity or company, in
30 accordance with the reclamation plan.

31 SEC. 20. Section 2774 of the Public Resources Code is
32 amended to read:

33 2774. (a) Every lead agency shall adopt ordinances in
34 accordance with state policy that establish procedures for the
35 review and approval of reclamation plans and financial
36 assurances and the issuance of a permit to conduct surface
37 mining operations, except that any lead agency without an active
38 surface mining operation in its jurisdiction may defer adopting an
39 implementing ordinance until the filing of a permit application.
40 The ordinances shall establish procedures requiring at least one

1 public hearing and shall be periodically reviewed by the lead
2 agency and revised, as necessary, to ensure that the ordinances
3 continue to be in accordance with state policy.

4 (b) The lead agency shall conduct an inspection of a surface
5 mining operation within six months of receipt by the lead agency
6 of the surface mining operation's report submitted pursuant to
7 Section 2207, solely to determine whether the surface mining
8 operation is in compliance with this chapter. In no event shall a
9 lead agency inspect a surface mining operation less than once in
10 any calendar year. The lead agency may cause an inspection to
11 be conducted by a state-registered geologist, state-registered civil
12 engineer, state-licensed landscape architect, or state-registered
13 forester, who is experienced in land reclamation and who has not
14 been employed by a surface mining operation within the
15 jurisdiction of the lead agency in any capacity during the
16 previous 12 months. All inspections shall be conducted using a
17 form developed by the department and approved by the board.
18 The operator shall be solely responsible for the reasonable cost of
19 the inspection. The lead agency shall notify the director within 30
20 days of the date of completion of the inspection that the
21 inspection has been conducted. The notice shall contain a
22 statement regarding the surface mining operation's compliance
23 with this chapter, shall include a copy of the completed
24 inspection form, and shall specify which aspects of the surface
25 mining operations, if any, are inconsistent with this chapter. If
26 the surface mining operation has a review of its reclamation plan,
27 financial assurances, or an interim management plan pending
28 under subdivision (b), (c), (d), or (h) of Section 2770, or an
29 appeal pending before the board or lead agency governing body
30 under subdivision (e) or (h) of Section 2770, the notice shall so
31 indicate. The lead agency shall forward to the operator a copy of
32 the notice, a copy of the completed inspection form, and any
33 supporting documentation, including, but not limited to, any
34 inspection report prepared by the geologist, civil engineer,
35 landscape architect, or forester.

36 (c) Prior to approving a surface mining operation's
37 reclamation plan, financial assurances, including existing
38 financial assurances reviewed by the lead agency pursuant to
39 subdivision (c) of Section 2770, or any amendments, the lead
40 agency shall submit the plan, assurances, or amendments to the

director for review. All documentation for that submission shall be submitted to the director at one time. When the lead agency submits a reclamation plan or plan amendments to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with Section 21000), and shall submit any other pertinent information. The lead agency shall certify to the director that the reclamation plan is in compliance with the applicable requirements of Article 1 (commencing with Section 3500) of Chapter 8 of Division 2 of Title 14 of the California Code of Regulations in effect at the time that the reclamation plan is submitted to the director for review.

(d) (1) The director shall have 30 days from the date of receipt of a reclamation plan or plan amendments submitted pursuant to subdivision (c), and 45 days from the date of receipt of financial assurances submitted pursuant to subdivision (c), to prepare written comments, if the director so chooses. The lead agency shall evaluate any written comments received from the director relating to the reclamation plan, plan amendments, or financial assurances within a reasonable amount of time.

(2) The lead agency shall prepare a written response to the director's comments ~~submitted to it, describing the disposition of all issues submitted to it, responding to each of the issues~~ raised by the director's comments, and submit the response to the director at least 30 days prior to approval of the reclamation plan, plan amendment, or financial assurance. The lead agency's comments shall describe whether the recommendations of the director are accepted by the lead agency, and if not, shall specify the reasons the lead agency declines to adopt them. The lead agency shall also give the director at least 30 days' notice of the time, place, and date of a hearing before the lead agency at which time the reclamation plan, plan amendment, or financial assurance is scheduled to be approved by the lead agency. If no hearing is required by this chapter or by a local ordinance or other state law, then the lead agency shall provide 30 days notice to the director that it intends to approve the reclamation plan, plan amendment, or financial assurance.

(3) To the extent that there is a conflict between the comments of a trustee agency or a responsible agency that are based on the agency's statutory or regulatory authority and the comments of other commenting agencies which are received by the lead agency pursuant to Division 13 (commencing with Section 21000) regarding a reclamation plan or plan amendments, the lead agency shall consider only the comments of the trustee agency or responsible agency.

(e) Lead agencies shall notify the director of the filing of an application for a permit to conduct surface mining operations within 30 days of an application being filed with the lead agency. By July 1, 1991, each lead agency shall submit to the director for every active or idle mining operation within its jurisdiction, a copy of the mining permit required pursuant to Section 2774, and any conditions or amendments to those permits. By July 1 of each subsequent year, the lead agency shall submit to the director for each active or idle mining operation a copy of any permit or reclamation plan amendments, as applicable, or a statement that there have been no changes during the previous year. Failure to file with the director the information required under this section shall be cause for action under Section 2774.4.

SEC. 21. Section 2774.1 of the Public Resources Code is amended to read:

2774.1. (a) Except as provided in subdivision (i) of Section 2770, if the lead agency or the director determines, based upon an annual inspection pursuant to Section 2774, or otherwise confirmed by an inspection of the mining operation, that a surface mining operation is not in compliance with this chapter, the lead agency or the director may notify the operator of that violation by personal service or certified mail. If the violation extends beyond 30 days after the date of the lead agency's or the director's notification, the lead agency or the director may issue an order by personal service or certified mail requiring the operator to comply with this chapter or, if the operator does not have an approved reclamation plan or financial assurances, cease all further mining activities.

(b) An order issued under subdivision (a) shall not take effect until the operator has been provided a hearing before the lead agency for orders issued by the lead agency, or board for orders issued by the director, concerning the alleged violation. Any

1 order issued under subdivision (a) shall specify which aspects of
2 the surface mine's activities or operations are inconsistent with
3 this chapter, shall specify a time for compliance which the lead
4 agency or director determines is reasonable, taking into account
5 the seriousness of the violation and any good faith efforts to
6 comply with applicable requirements, and shall set a date for the
7 hearing, which shall not be sooner than 30 days after the date of
8 the order.

9 (c) Any operator who violates or fails to comply with an order
10 issued under subdivision (a) after the order's effective date, as
11 provided in subdivision (b), or who fails to submit a report to the
12 director or lead agency as required by Section 2207, shall be
13 subject to an order by the lead agency or the director imposing an
14 administrative penalty of not more than five thousand dollars
15 (\$5,000) per day, assessed from the original date of
16 noncompliance with this chapter or Section 2207. The penalty
17 may be imposed administratively by the lead agency or the
18 director. In determining the amount of the administrative penalty,
19 the lead agency or the director shall take into consideration the
20 nature, circumstances, extent, and gravity of the violation or
21 violations, any prior history of violations, the degree of
22 culpability, economic savings, if any, resulting from the
23 violation, and any other matters justice may require. Orders
24 setting administrative penalties shall become effective upon
25 issuance thereof and payment shall be made to the lead agency or
26 the director within 30 days, unless the operator petitions the
27 legislative body of the lead agency, the board, or the superior
28 court for review as provided in Section 2774.2. Any order shall
29 be served by personal service or by certified mail upon the
30 operator. Penalties collected by the director shall be used for no
31 purpose other than to cover the reasonable costs incurred by the
32 director in implementing this chapter or Section 2207.

33 (d) If the lead agency or the director determines that the
34 surface mine is not in compliance with this chapter, so that the
35 surface mine presents an imminent and substantial endangerment
36 to the public health or the environment, the lead agency or the
37 Attorney General, on behalf of the director, may seek an order
38 from a court of competent jurisdiction enjoining that operation.

39 (e) Upon a complaint by the director, the department, or the
40 board, the Attorney General may bring an action to recover

1 administrative penalties under this section, and penalties under
2 Section 2207, in any court of competent jurisdiction in this state
3 against any person violating any provision of this chapter or
4 Section 2207, or any regulation adopted pursuant to this chapter
5 or Section 2207. The Attorney General may bring such an action
6 on his or her own initiative if, after examining the complaint and
7 the evidence, he or she believes a violation has occurred. The
8 Attorney General may also seek an order from a court of
9 competent jurisdiction compelling the operator to comply with
10 this chapter and Section 2207.

11 (f) The lead agency has primary responsibility for enforcing
12 this chapter and Section 2207 after a surface mining operator has
13 commenced lawful activity under an approved reclamation plan.
14 When the director, after providing the lead agency with written
15 comments, determines that a local lead agency approved a
16 reclamation plan, plan amendment, or financial assurance that
17 does not comply with this ~~division~~ *chapter*, the board's
18 regulations, or Section 2207, the director may bring an action in
19 the form of a writ of mandamus against the lead agency to set
20 aside any approval of the plan, plan amendment, or financial
21 assurance. The director may also seek to enjoin any surface
22 mining operation from operating pursuant to the reclamation
23 plan, plan amendment, or financial assurance, unless the plan or
24 assurance is made to conform with this ~~act~~ *chapter* or Section
25 2207, as applicable. This action shall be brought by the director
26 within 45 days of the lead agency's approval of the plan, plan
27 amendment, or financial assurance, provided the lead agency has
28 given the required notices provided for in subdivision (d) of
29 Section 2774. Any action shall be brought by the director within
30 180 days of the lead agency's approval of the plan, plan
31 amendment, or financial assurance, if the lead agency has failed
32 to provide these notices.

33 (g) Remedies under this section are in addition to, and do not
34 supersede or limit, any and all other remedies, civil or criminal,
35 and include the remedy of enjoining a mining operator from
36 operating in violation of its approved reclamation plan or outside
37 the boundaries of its approved reclamation plan. In any
38 enforcement action of the director under this ~~act~~ *chapter* or
39 Section 2207, the director need not demonstrate the absence of
40 irreparable injury or the inadequacy of other legal remedies.

SEC. 22. Section 2775 of the Public Resources Code is amended to read:

2775. (a) An applicant whose request for a permit to conduct surface mining operations in an area of statewide or regional significance has been denied by a lead agency may, within 15 days of exhausting his *or her* rights to appeal in accordance with the procedures of the lead agency, appeal to the board.

(b) The board may, by regulation, establish procedures for declining to hear appeals that it determines raise no substantial issues.

~~(c) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing held within the jurisdiction of the lead agency which processed the original application within 30 days of the filing of the appeal, or such longer period as may be mutually agreed upon by the board and the person filing the appeal. In any such action, the board shall not exercise its independent judgment on the evidence. The board shall determine whether the lead agency's decision is appropriate given that the areas in question have been determined to be of regional or statewide significance. The board may affirm the decision of the lead agency, or may reverse the decision of the lead agency, in whole or part, and issue a permit to conduct surface mining operations on the property in question. In any determination to reverse the decision of the lead agency, notwithstanding Section 2757, the board may impose conditions on the mining operation as it deems appropriate under the circumstances.~~

(c) (i) Appeals that the board does not decline to hear shall be scheduled and heard at a public hearing held within the jurisdiction of the lead agency that processed the original application within 180 days of the filing of the appeal. If the board is required to prepare, or causes to be prepared, a certified an environmental impact report in connection with the appeal, the public hearing shall be held within one year of the date of the filing of the appeal or any longer period that may be mutually agreed upon by the board and the appellant. In the event the board does not decline to hear the appeal, the lead agency shall prepare, certify, and provide to the board and the appellant, a record of the proceedings, if any, before the local lead agency, relating to the issues for which an appeal is sought.

1 *All documents prepared by the local lead agency pursuant to*
2 *Division 13 (commencing with Section 21000) shall be part of*
3 *the record on appeal. The reasonable costs of preparing the*
4 *record on appeal shall be borne by the appellant. Upon*
5 *completion of a hearing, the board shall affirm the lead agency's*
6 *decision if, upon exercise of the board's independent judgment in*
7 *reviewing the record, the board determines that the lead*
8 *agency's decision is consistent with the provisions of this*
9 *chapter, Division 13 (commencing with Section 21000), the*
10 *state's policies adopted by the board for conducting surface*
11 *mining operations in areas of statewide or regional significance,*
12 *and the lead agency's surface mining or land use ordinances. If*
13 *the board determines that the lead agency's decision is not*
14 *consistent with this chapter, Division 13 (commencing with*
15 *Section 21000), the state's policies adopted by the board for*
16 *conducting surface mining operations in areas of statewide or*
17 *regional significance, or the lead agency's surface mining or*
18 *land use ordinances, the board, taking into account (1) that the*
19 *areas in question have been determined to be of statewide or*
20 *regional significance and (2) any conditions that were proposed*
21 *by the lead agency, may grant a permit to conduct surface*
22 *mining operations. In a determination to grant a permit to*
23 *conduct surface mining operations, notwithstanding Section*
24 *2757, the board may impose those conditions on the mining*
25 *operation it deems appropriate under the circumstances.*

26 *(ii) The board shall provide notice of a public hearing*
27 *required by paragraph (i), consistent with the notice provisions*
28 *set forth in Section 65091 of the Government Code, including*
29 *providing notice to the lead agency.*

30 SEC. 23. No reimbursement is required by this act pursuant
31 to Section 6 of Article XIII B of the California Constitution
32 because the only costs that may be incurred by a local agency or
33 school district will be incurred because this act creates a new
34 crime or infraction, eliminates a crime or infraction, or changes
35 the penalty for a crime or infraction, within the meaning of
36 Section 17556 of the Government Code, or changes the
37 definition of a crime within the meaning of Section 6 of Article
38 XIII B of the California Constitution.

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